

The Honorable Robert S. Lasnik
United States District Court Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MOI, an individual,

Plaintiff,

v.

CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY,
individually and as a married person;
LESLIE CHIHULY, individually and as a
married person,

Defendants.

NO. 2:17-cv-00853-RSL

**PLAINTIFF AND COUNTERCLAIM
DEFENDANT'S ANSWER AND
DEMAND FOR JURY TRIAL**

CHIHULY, INC., a Washington
corporation; DALE CHIHULY, an
individual,

Counterclaim
Plaintiffs,

v.

MICHAEL MOI, an individual,

Counterclaim
Defendant.

{00279881;1}

PLAINTIFF AND COUNTERCLAIM
DEFENDANT'S ANSWER AND DEMAND FOR
JURY TRIAL - 1

FREY BUCK, P.S.
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1 COMES NOW Plaintiff Michael Moi, by and through his attorneys, Frey Buck, P.S., and
2 answers Defendants' Counterclaim for Declaratory Relief and Conversion. Except as expressly
3 admitted below, Plaintiff denies every allegation contained in Defendants' Counterclaim.

4 **INTRODUCTION**

5 **I.**

6 In answer to paragraph I of Defendants' Counterclaim, Plaintiff denies he is a "handyman."
7 He admits he painted at the Chihuly Studio for fourteen to fifteen years and that Dale Chihuly gave
8 him a BMW, entrusted him with personal documents and made specific and repeated promises of
9 compensation for his painting efforts. Otherwise, Plaintiff denies the allegations contained therein.

10 **II.**

11 In answer to paragraph II of Defendants' Counterclaim, Plaintiff lacks sufficient
12 information to admit or deny the allegations contained therein, and therefore denies the same.

13 **III.**

14 In answer to paragraph III of Defendants' Counterclaim, Plaintiff lacks sufficient
15 information to admit or deny the allegations contained therein, and therefore denies the same.

16 **IV.**

17 In answer to paragraph IV of Defendants' Counterclaim, Plaintiff admits that Dale does not
18 work alone. Indeed, at times he does not work at all, allowing others to create works in his absence
19 and then signing them as if he created them or was involved in the process. However, Dale and the
20 Studio have consistently claimed over the years that he works alone on drawings/paintings. In the
21 introduction to the book, *Chihuly Drawings*, published by Chihuly Workshop, it describes the
22 relationship between Dale and the drawings/paintings in decidedly solitary and intimate terms,
23 stating, "[Dale Chihuly] speaks about the way that drawing is a way for him to 'be by myself' or 'a

{00279881;1}

1 way to think.’ Chihuly acknowledges the ‘very central role’ that drawing plays in his creativity”
2 Editor: Barry Rosen, Barry. *Chihuly Drawings* at 16 (2014). Plaintiff lacks sufficient information
3 to admit or deny the remaining allegations contained therein, and therefore denies the same.

4 V.

5 In answer to paragraph V of Defendants’ Counterclaim, Plaintiff denies the allegation that
6 “Dale’s bipolar disorder is an issue that is rarely discussed publicly.” In 2006, the Seattle PI
7 released an article entitled “Chihuly victimized by his own success? Despite depression, legal
8 woes, renowned artist still turns out the work.”¹ The article talks at length about Dale’s bipolar
9 disorder and hit the media in conjunction with a copyright infringement lawsuit Chihuly filed in
10 October 2005. Chihuly now employs the same tactic years later in the face of another copyright
11 infringement lawsuit, discussing his mental health issues in a news article titled, “At 75, Dale
12 Chihuly discusses struggles with mental health”² published the same day that Chihuly filed this
13 action in superior court and removed it to federal court. Defendants (namely Chihuly Studio and
14 Leslie Chihuly) are exploiting Dale’s mental health issues to stave off legitimate copyright and
15 VARA claims. For years, Leslie Chihuly and Chihuly Studio have undertaken efforts to hide
16 Dale’s struggles with mental health and his inability to work on a daily basis, not to protect him,
17 but to ensure that the cash cow known as “Chihuly” continued to moo. By creating the illusion that
18 Dale continued to work steadily despite his mental health struggles, Chihuly Studio was able to
19 churn out expensive works the public believed were created solely by Chihuly – a false reality.
20 Plaintiff lacks sufficient information to admit or deny the remaining allegations contained therein,
21 and therefore denies the same.

22
23 ¹ <http://www.seattlepi.com/ae/article/Chihuly-victimized-by-his-own-success-1201229.php>
² <https://www.apnews.com/5acce34113af46deb3d4db6be2c5c6a9>
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VI.

In answer to paragraph VI of Defendants' Counterclaim, Plaintiff admits he learned personal information about Dale Chihuly as a friend and confidant of Mr. Chihuly. Plaintiff also admits he has possessed documents personally entrusted to him by Dale Chihuly. Plaintiff has never threatened to release or publish these documents and has agreed to return the documents to Chihuly. Defendants' contention that Plaintiff has threatened to make such documents public is wholly and utterly baseless; indeed, the only public mention of such documents has come from Defendants, not from Plaintiff. Plaintiff further notes that Defendants have admitted they based their claim of extortion on a legal demand letter, not upon any threat by Plaintiff. Plaintiff denies the remaining allegations contained therein.

VII.

In answer to paragraph VII of Defendant's Counterclaim, Plaintiff denies the allegations contained therein. The only parties who have preyed on Dale's disability are Leslie Chihuly and the Chihuly Studio, fueled by greed and the desire to earn more money off the Chihuly name. The only thing "calculated, cynical, and deplorable" is Defendants' effort to use Dale's mental illness, a non-topic in this litigation, to defer and deflect against legitimate claims.

VIII.

The allegations contained in paragraph VIII of Defendants' Counterclaim are assertions of law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the same.

PARTIES

IX.

{00279881;1}

PLAINTIFF AND COUNTERCLAIM
DEFENDANT'S ANSWER AND DEMAND FOR
JURY TRIAL - 4

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1 In answer to paragraph IX of Defendants' Counterclaim, Plaintiff admits the allegations
2 contained therein.

3 **X.**

4 In answer to paragraph X of Defendants' Counterclaim, Plaintiff admits the allegations
5 contained therein.

6 **XI.**

7 In answer to paragraph XI of Defendants' Counterclaim, Plaintiff admits the allegations
8 contained therein.

9 **JURISDICTION AND VENUE**

10 **XII.**

11 In answer to paragraph XII of Defendants' Counterclaim, Plaintiff admits the allegations
12 contained therein.

13 **XIII.**

14 In answer to paragraph XIII of Defendants' Counterclaim, Plaintiff admits the allegations
15 contained therein.

16 **XIV.**

17 In answer to paragraph XIV of Defendants' Counterclaim, Plaintiff admits the allegations
18 contained therein.

19 **FACTS**

20 **XV.**

21 Paragraph XV appears to be an incomplete sentence. To the extent the Court requires an
22 answer, Plaintiff denies the same.

23 {00279881;1}

1 **XVI.**

2 In answer to paragraph XVI of Defendants' Counterclaim, Plaintiff lacks sufficient
3 information to admit or deny the remaining allegations contained therein, and therefore denies the
4 same.

5 **XVII.**

6 In answer to paragraph XVII of Defendants' Counterclaim, Plaintiff lacks sufficient
7 information to admit or deny the remaining allegations contained therein, and therefore denies the
8 same.

9 **XVIII.**

10 In answer to paragraph XVIII of Defendants' Counterclaim, Plaintiff lacks sufficient
11 information to admit or deny the remaining allegations contained therein, and therefore denies the
12 same.

13 **XIX.**

14 In answer to paragraph XIX of Defendants' Counterclaim, Plaintiff lacks sufficient
15 information to admit or deny the remaining allegations contained therein, and therefore denies the
16 same.

17 **XX.**

18 In answer to paragraph XX of Defendants' Counterclaim, Plaintiff admits Dale's drawings
19 are a major part of Defendants' financial portfolio. Plaintiff lacks sufficient information to admit or
20 deny the remaining allegations contained therein, and therefore denies the same.

21 **XXI.**

22 {00279881;1}
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1 In answer to paragraph XXI of Defendants' Counterclaim, Plaintiff lacks sufficient
2 information to admit or deny the remaining allegations contained therein, and therefore denies the
3 same.

4 **XXII.**

5 In answer to paragraph XXII of Defendants' Counterclaim, Plaintiff lacks sufficient
6 information to admit or deny the remaining allegations contained therein, and therefore denies the
7 same.

8 **XXIII.**

9 In answer to paragraph XXIII of Defendants' Counterclaim, Plaintiff lacks sufficient
10 information to admit or deny the remaining allegations contained therein, and therefore denies the
11 same.

12 **XXIV.**

13 In answer to paragraph XXIV of Defendants' Counterclaim, Plaintiff lacks sufficient
14 information to admit or deny the remaining allegations contained therein, and therefore denies the
15 same.

16 **XXV.**

17 Paragraph XV of Defendants' Counterclaim appears to be an incomplete sentence that does
18 not require an answer. To the extent the Court requires an answer, Plaintiff denies the same.

19 **XXVI.**

20 In answer to paragraph XXVI of Defendants' Counterclaim, Plaintiff admits he was hired
21 as an independent contractor for building and construction-related work and that at times he
22 received proper compensation for this work. Plaintiff denies the remaining allegations contained
23 therein.

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1 **XXVII.**

2 In answer to paragraph XVIII of Defendants' Counterclaim, Plaintiff admits he became
3 privy to details of Dale's personal life through his friendship with Dale and personally observed
4 some of Dale's struggles with mental health issues. Plaintiff denies the remaining allegations
5 contained therein.

6 **XXVIII.**

7 In answer to paragraph XXVIII of Defendants' Counterclaim, Plaintiff admits the
8 allegations contained therein.

9 **XXIX.**

10 In answer to paragraph XXIX of Defendants' Counterclaim, Plaintiff admits he was never
11 Dale's personal assistant. Plaintiff denies the remaining allegations contained therein.

12 **XXX.**

13 The allegations contained in paragraph XXX of Defendants' Counterclaim are assertions of
14 law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the
15 same.

16 **XXXI.**

17 In answer to paragraph XXXI of Defendants' Counterclaim, Plaintiff admits that Dale does
18 not work alone. Indeed, at times he does not work at all, while others create works that are later
19 sold as "Chihuly" pieces. Plaintiff denies that "Dale and Chihuly, Inc. have been open about the
20 collaborative process." Plaintiff lacks sufficient information to admit or deny the remaining
21 allegations contained therein, and therefore denies the same.

22 **XXXII.**

23 {00279881;1}

1 In answer to paragraph XXXII of Defendants' Counterclaim, having himself painted pieces
2 of art later sold as a "Chihuly," Plaintiff admits the creation of such art can be physically taxing.
3 Plaintiff lacks sufficient information to admit or deny the remaining allegations contained therein,
4 and therefore denies the same.

5 **XXXIII.**

6 In answer to paragraph XXXIII of Defendants' Counterclaim, Plaintiff admits he helped set
7 up, refresh supplies, and move materials. He also admits he laid down backgrounds and applied
8 other imagery on works later sold as Dale Chihuly's sole work. Plaintiff admits that many times
9 Dale was not present during these sessions and had no input on the artistic method or outcome.
10 Plaintiff lacks sufficient information to admit or deny the remaining allegations contained therein,
11 and therefore denies the same.

12 **XXXIV.**

13 In answer to paragraph XXXIV of Defendants' Counterclaim, Plaintiff denies that Dale
14 personally signs each drawing. Plaintiff has personally witnessed other people sign Dale's
15 signature, including Billy O'Neill. Plaintiff lacks sufficient information to admit or deny the
16 remaining allegations contained therein, and therefore denies the same.

17 **XXXV.**

18 In answer to paragraph XXXV of Defendants' Counterclaim, Plaintiff lacks sufficient
19 information to admit or deny the remaining allegations contained therein, and therefore denies the
20 same.

21 **XXXVI.**

22 In answer to paragraph XXXVI of Defendants' Counterclaim, Plaintiff denies the
23 allegations contained therein.

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1 **XXXVII.**

2 In answer to paragraph XXXVII of Defendants' Counterclaim, Plaintiff denies the
3 allegations contained therein.

4 **XXXVIII.**

5 In answer to paragraph XXXVIII of Defendants' Counterclaim, Plaintiff admits he was
6 placed in a position of trust and confidence by Dale and asked to safeguard documents for Dale.
7 Plaintiff admits that language in paragraph 3.14 of Plaintiff's Complaint speaks for itself.

8 **XXXIX.**

9 In answer to paragraph XXXIX of Defendants' Counterclaim, Plaintiff denies the
10 allegations contained therein. Plaintiff has never threatened to make the documents he was
11 entrusted with public and has agreed to return the documents to Defendants pursuant to a
12 protective order.

13 **XL.**

14 In answer to paragraph XL of Defendants' Counterclaim, Plaintiff denies the allegations
15 contained therein.

16 **XLI.**

17 In answer to paragraph XLI of Defendants' Counterclaim, Plaintiff denies the allegations
18 contained therein. Plaintiff has never threatened to disclose personal information about Dale
19 Chihuly and Defendants' contention is baseless, frivolous, and sanctionable. The only parties
20 exploiting Dale's mental health for their benefit are Leslie Chihuly and the Chihuly Studio.

21 **CAUSES OF ACTION**

22 **XLII.**

23 {00279881;1}

1 Paragraph XLII of Defendants' Counterclaim is neither a statement of law nor fact and
2 does not require an answer. To the extent the Court requires an answer, Plaintiff denies the same.

3 **XLIII.**

4 The allegations contained in paragraph XLIII of Defendants' Counterclaim are assertions
5 of law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies
6 the same.

7 **XLIV.**

8 The allegations contained in paragraph XLIV of Defendants' Counterclaim are assertions
9 of law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies
10 the same.

11 **XLV.**

12 The allegations contained in paragraph XLV of Defendants' Counterclaim are assertions of
13 law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the
14 same.

15 **XLVI.**

16 Paragraph XLVI of Defendants' Counterclaim is neither a statement of law nor fact and
17 does not require an answer. To the extent the Court requires an answer, Plaintiff denies the same.

18 **XLVII.**

19 In answer to paragraph XLVII of Defendants' Counterclaim, Plaintiff admits the Dale
20 entrusted him with personal property for the specific purpose of safekeeping. Plaintiff denies the
21 remaining allegations contained therein.

22 **XLVIII.**

23 {00279881;1}

1 In answer to paragraph XLVIII of Defendants' Counterclaim, Plaintiff denies the
2 allegations contained therein.

3 **XLIX.**

4 In answer to paragraph XLIX of Defendants' Counterclaim, Plaintiff denies the allegations
5 contained therein.

6 **L.**

7 The allegations contained in paragraph L of Defendants' Counterclaim are assertions of
8 law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the
9 same.

10 **LI.**

11 The allegations contained in paragraph LI of Defendants' Counterclaim are assertions of
12 law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the
13 same.

14 **LII.**

15 The allegations contained in paragraph LII of Defendants' Counterclaim are assertions of
16 law that do not require an answer. To the extent the Court requires an answer, Plaintiff denies the
17 same.

18 **AFFIRMATIVE DEFENSES**

19 Plaintiff further responds to Defendants' Counterclaims by alleging the following
20 affirmative defenses:

- 21 1. Defendants' Counterclaim fails to state a claim upon which relief may be granted;
22 2. Defendants' claims are barred by the statute of limitations.

23 {00279881;1}

1 Plaintiff reserves the right to amend this answer or add affirmative defenses as may be
2 required after further investigation and discovery in this case.

3 **JURY DEMAND**

4 Plaintiff and Counterclaim Defendant Michael Moi request this matter, and all issues
5 therein, be set and heard before a jury.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that Defendants' Counterclaim be dismissed with prejudice
8 to Plaintiff, that Defendants take nothing by their Counterclaim against Plaintiff, and that Plaintiff
9 be allowed his costs and reasonable attorneys' fees herein, pursuant to all applicable federal and
10 state law and court rules, including but not limited to 28 U.S.C. § 1920 RCW 4.84.010, RCW
11 4.84.080, RCW 4.84.185, Fed. R. Civ. Proc. CR 11(c), and LCR 11(c).

12
13 DATED this 7th day of July, 2017, at Seattle, Washington.

14 **FREY BUCK, P.S.**

15 s/ Anne Bremner
16 Anne Bremner, WSBA #13269
17 Ted Buck, WSBA #22029
Evan D. Bariault, WSBA #42867
Attorneys for Plaintiff

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23 {00279881;1}

1 **Certificate of Service**

2 The undersigned certifies under the penalty of perjury according to the laws of the United
3 States and the State of Washington that on this date I caused to be served in the manner noted
4 below **PLAINTIFF AND COUNTERCLAIM DEFENDANT'S ANSWER AND DEMAND
FOR JURY TRIAL** on the following individuals:

5 Susan E. Foster
6 Harry H. Schneider
7 William C. Rava
8 Perkins Coie LLP
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10
11 ☐ Via Legal Messenger
12 ☐ Via U.S. Mail
13 ☒ Via Email
14 ☒ Via ECF

15
16 DATED this 7th day of July, 2017, at Seattle, Washington.

17 s/ Lia Maria Fulgaro
18 Lia Maria Fulgaro
19 Paralegal
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